

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARK NUNEZ, et al.,

Plaintiffs,

-against-

CITY OF NEW YORK, et al.,

Defendants.

**DECLARATION OF  
ASSISTANT ATTORNEY  
GENERAL JENNIFER  
GASHI**

11 Civ. 5845 (LTS)(JCF)

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UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

-against-

CITY OF NEW YORK and NEW YORK CITY  
DEPARTMENT OF CORRECTION,

Defendants.

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STATE OF NEW YORK )


:SS:

COUNTY OF \_\_\_\_\_ )

Jennifer Gashi, declares pursuant to 28 U.S.C. §1746 under penalty of perjury that the following is true and correct:

1. I have been asked by counsel for the City of New York to prepare the following declaration pertaining to the death of Marvin Pines on February 4, 2023 (Pines Death) and the death of Donny Ubiera on August 22, 2023 (Ubiera Death), both of whom were in the custody of the New York City Department of Correction at the time they died.
2. I am an Assistant Attorney General in the Office of the Attorney General of the State of New York, assigned to the Office of Special Investigation (OSI).

3. New York Executive Law Section 70-b (Section 70-b) directs OSI to investigate any incident in which a police officer or a peace officer, as defined, has caused the death of a person by an act or omission or in which there is “question” whether such officer may have caused the death. Section 70-b further directs OSI, if warranted, to prosecute any criminal offense that the officer may have committed in connection with the incident. Peace officers, as defined in Section 70-b, include corrections officers in all jails and prisons in the State of New York.
4. Section 70-b provides that OSI has exclusive criminal jurisdiction in the State of New York with regard to incidents within the scope of Section 70-b. Therefore, with regard to those deaths, OSI stands in the shoes of the district attorney for the county in which the incident occurred.
5. Pursuant to Section 70-b, the Pines Death and the Ubiera Death fall under the exclusive criminal jurisdiction OSI, as there is a question whether a corrections officer, as defined, has caused those deaths by an act or omission, and OSI is currently conducting investigations of those deaths.
6. I am familiar with the facts and investigation into the Pines Death and the Ubiera Death. Because these investigations remain open and active, disclosure of any investigative information concerning the Pines Death or the Ubiera Death would tend to impede the investigations. It is OSI’s experience that release of investigative information tends to identify witnesses and potential witnesses, including confidential witnesses, which in turn tends to make potential witnesses reluctant to speak with us and can even in certain cases put witnesses at risk. Moreover, release of investigative information may lead witnesses to alter what they say if and when they do speak with us.

  
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Jennifer Gashi  
Assistant Attorney General

Date: 10/3/2023